

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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|---------------------------|---|----------------------|
| UNITED STATES OF AMERICA, | ) |                      |
|                           | ) |                      |
| Plaintiff,                | ) |                      |
|                           | ) |                      |
| v.                        | ) | Case No.: 02-20421 D |
|                           | ) |                      |
| GARY COPELAND,            | ) |                      |
|                           | ) |                      |
| Defendants.               | ) |                      |

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**ORDER DENYING DEFENDANT’S MOTION FOR JUDGMENT OF ACQUITTAL OR,  
IN THE ALTERNATIVE, FOR NEW TRIAL**

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Before the Court is the motion of Defendant Gary Copeland for a judgment of acquittal or, in the alternative, for a new trial. On March 21, 2003, Defendant was found guilty by a jury of violating 49 U.S.C. § 46505.<sup>1</sup> At the close of the government’s proof and again at the conclusion of all of the proof, Defendant motioned the Court for judgment of acquittal, which the Court denied. Defendant now renews his motion for judgment of acquittal and also seeks a new trial in the alternative, arguing that no reasonable jury could have found Defendant guilty by proof beyond a reasonable doubt. For the following reasons, the Court denies Defendant’s motion for a judgment of acquittal or, in the alternative, for a new trial.

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<sup>1</sup> Title 49, section 46505 of the United States Code provides in pertinent part that

An individual shall be fined under title 18, imprisoned for not more than 10 years, or both, if the individual--  
(1) when on, or attempting to get on, an aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about the individual or the property of the individual a concealed dangerous weapon that is or would be accessible to the individual in flight....

When ruling on a motion for acquittal, the Court must review the evidence in the light most favorable to the government to determine whether any rational trier of fact could have found the essential elements of the crime were proven beyond a reasonable doubt. United States v. Avery, 128 F.3d 966, 971 (6<sup>th</sup> Cir. 1997) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979)). In addition, the Court must resolve all available inferences and all issues of credibility in favor of the government. Id. The government's proof is not required to exclude every reasonable hypothesis except guilt. Id.

Defendant argues that the evidence did not establish that he "knowingly" carried a gun on the aircraft. Defendant admitted, however, that the weapon in question belonged to him, that it was concealed in his carry bag, and that he was attempting to board an aircraft in air transportation at the time the weapon was found. Furthermore, Defendant admitted that he packed his bag and that he packed some items in the bag on the morning he took the flight. Defendant maintained that he forgot that the weapon was in his carry bag, and therefore, he lacked knowledge that it was in the bag. The jury was entitled to reject Defendant's explanation and contention that he forgot the weapon was in the bag. Likewise, the jury could reasonably have concluded, based on Defendant's testimony, that Defendant knew that the gun was in the bag. Accordingly, a rational jury could have found that the essential elements of 49 U.S.C. § 46505 were proven beyond a reasonable doubt.

Defendant also asserts that he is entitled to a new trial because the jury's verdict was contrary to the great weight of the evidence. When ruling on a motion for a new trial which claims that a verdict was against the great weight of the evidence, the Court

can consider the credibility of the witnesses and the weight of the evidence to insure that there is not a miscarriage of justice.

...

Nevertheless, granting a Fed. R. Crim. P. 33 Motion for New Trial attacking the weight of the evidence is a discretionary matter. The Court should exercise such discretion only in the extraordinary circumstances where the evidence preponderates heavily against the verdict.

Unites States v. Ashworth, 836 F.2d 260, 266 (6<sup>th</sup> Cir. 1988) (quoting United States v. Turner, 490 F. Supp. 583, 593 (E.D. Mich. 1979), aff'd, 633 F.2d 219 (6th Cir. 1980), cert. denied, 450 U.S. 912, 67 L. Ed. 2d 336, 101 S. Ct. 1351 (1981)).

As discussed previously, the only disputed issue in this case is whether Defendant had knowledge that the gun was in his carry bag. As the Court noted when denying Defendant's initial motion for judgment of acquittal, Mr. Riley, the airport screener, testified that Defendant did not appear surprised when the gun was found in his carry bag. Moreover, according to Officer Cochran, Defendant acknowledged that there might be ammunition in the bag and he pointed to the pocket where the gun was found. Given this testimony, the testimony of Defendant, and the testimony of other witnesses, the Court cannot conclude that the evidence preponderates heavily in favor of a finding that Defendant did not "knowingly" carry the weapon or that the evidence preponderates heavily against the verdict. The Court denies, therefore, Defendant's motion for a new trial.

For the foregoing reasons, Defendant's motion for judgment of acquittal or, in the alternative, for a new trial is **DENIED**.

**IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

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**BERNICE BOUIE DONALD**  
**UNITED STATES DISTRICT JUDGE**